

Message Text

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DRAFTED BY EUR/CE:BAFLATIN;L/SCA:HRGAITHER:KP:

APPROVED BY EUR:AAHARTMAN

EUR/CE:DANDERSON

L:MLEIGH

L/M:KEMALMBORG

JUSTICE:JCKEENEY

TREASURY:JBCLAWSON

SEC:IHPEARCE

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O 052059Z JUN 75

FM SECSTATE WASHDC

TO AMEMBASSY BERN IMMEDIATE

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E.O. 11652: N/A

TAGS: PFOR, CFED (JUDICIAL ASSISTANCE TREATY), SZ

SUBJECT: STATUS OF THE JUDICIAL ASSISTANCE TREATY

REF: (A) BERN 2272, (B) BERN 1469, (C) STATE 70379

(D) BERN 1295, (E) BERN 1134, (F) STATE 54070

(G) BERN 1062, (H) STATE 51667, (I) STATE 51666

FOR THE AMBASSADOR

1. THE DEPARTMENT FINDS IT SURPRISING THAT THE FPD NOW
CONTEMPLATES A FURTHER DELAY IN THE EXCHANGE OF NOTES
(REFTEL A), SINCE THAT OFFICE HAD ASSURED THE EMBASSY TWO
MONTHS AGO (REFTEL B) THAT THEY WERE READY TO PROCEED WITH
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THIS ACTION. FURTHERMORE, THE NEW FPD DISSATISFACTION WITH

THE INTRODUCTORY LANGUAGE OF THE DRAFT US NOTE (PARA 3, REFTTEL A) REPRESENTS YET ANOTHER CHANGE IN THE SWISS POSITION, SINCE NO SUCH OBJECTIONS WERE VOICED IN EARLY APRIL (PARA 1, REFTTEL B). INDEED, DR. KRAFFT OF THE FPD "READILY CONCEDED INCONSISTENCY" ON MARCH 13 (REFTTEL E).

2. AS EXPLAINED IN PARA 3, REFTTEL I, A MAJOR OBSTACLE WE HAVE FACED SINCE EARLY THIS YEAR IN SECURING ANY OFFICIAL SWISS ACKNOWLEDGEMENT OF THE PROBLEM INVOLVED HAS BEEN OUR INABILITY TO HAVE THIS MATTER CONSIDERED AT A SUFFICIENTLY HIGH LEVEL. WE HAD BELIEVED THAT IT WOULD BE MORE HELPFUL TO MOVE THE DISCUSSION TO THE FPD LEVEL AFTER THE INITIAL EXCHANGES WITH MARKEES HAD PRODUCED NO RESULTS. IT IS DISCONCERTING, THEREFORE, TO NOTE THAT THE FPD "IS UNWILLING TO INFORM THE GOS" ABOUT THIS MATTER (PARA. 2, REFTTEL A). WE HAD ASSUMED THAT BY RAISING THE MATTER WITH THE FPD WE WERE ADDRESSING THE GOS.

3. IN EVALUATING THE CURRENT SITUATION, THE DEPARTMENT IS CONCERNED THAT THE SWISS MAY HAVE ALREADY DECIDED TO LET THEIR RATIFICATION PROCEDURE PROCEED ALONG THE LINES "SUGGESTED" IN PARA 4 (A), REFTTEL A, WITHOUT A FIRM COMMITMENT TO PROCEED PROMPTLY WITH THE EXCHANGE OF NOTES. WITHOUT THE PROPOSED EXCHANGE OF NOTES, THE USG WOULD ALMOST CERTAINLY FIND TREATY UNACCEPTABLE. (FYI: AS YOU CAN APPRECIATE, FAILURE OF THE USG TO RATIFY THE TREATY AFTER THE SWISS HAD DONE SO COULD BE POTENTIALLY EMBARRASSING TO THE US. SWISS COULD THEN ARGUE THAT THROUGH THEIR COMPLETION OF THE RATIFICATION PROCESS THEY HAD FULFILLED THEIR INTERNATIONAL OBLIGATIONS IN REGARD TO COOPERATION WITH US IN CRIMINAL MATTERS. END FYI)

4. IN VIEW OF THE SERIOUSNESS AND URGENCY OF THIS PROBLEM, THE DEPARTMENT REQUESTS THAT THE AMBASSADOR EXPEDITIOUSLY RAISE MATTER WITH PRESIDENT GRABER IN HIS CAPACITY AS FOREIGN MINISTER. (IN VIEW OF GRABER'S CURRENT DUAL POSITION AS PRESIDENT AND FOREIGN MINISTER, THIS WILL ESTABLISH FOR THE RECORD THAT MATTER WAS BROUGHT TO THE ATTENTION OF THE SWISS FEDERAL COUNCIL PRIOR TO THE COMPLETION OF THE RATIFICATION PROCESS BY THE SWISS.)
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5. AS FOR THE FPD'S SENSITIVITY OVER THE INTRODUCTORY LANGUAGE OF THE DRAFT US NOTE, THE EMBASSY IS REQUESTED TO EXPLAIN TO MULLER THAT THE TEXT STATES SPECIFICALLY THE REASON FOR THE USG CONCERN, AND IS NOT INTENDED TO BE PEJORATIVE IN ANY SENSE. HOWEVER, IN VIEW OF THE FACT THAT THE US AIDE MEMOIRE (PARA 2, REFTTEL H) STATES THE PROBLEM CLEARLY FOR THE RECORD, THE DEPARTMENT WOULD HAVE

NO OBJECTION TO THE DELETION OF THE SECOND PARAGRAPH OF
THE DRAFT NOTE (PARA 1, REFTEL H). KISSINGER

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